

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2019

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD) No.3892 of 2014
and
M.P. No.1 of 2014

Devendiran

... Petitioner

Vs

N.Sakunthala

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal order dated 21.01.2014 made in C.M.A.No.12 of 2012 on the file of the Subordinate Court at Pollachi reversing the Fair and Decreetal order dated 13.06.2012 made in I.A.No.854 of 2012 in O.S.No.265 of 2012 on the file of the District Munsif Court at Pollachi.

For Petitioner

: Mr.K.P.Gopalakrishnan

For Respondent

: Mr.M.N.Balakrishnan

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ORDER

The instant civil revision petition has been filed challenging the order dated 21.01.2014 passed by the learned Subordinate Judge, Pollachi in C.M.A.No.12 of 2012 reversing the order dated 13.06.2012 passed by the learned District Munsif, Pollachi in I.A.No.854 of 2014 in O.S.No.265 of 2012.

Brief facts leading to the filing of the instant revision:

2. The petitioner is the defendant in the suit O.S.No.265 of 2012 on the file of the Court of District Munsif, Pollachi and the respondent is the plaintiff. The said suit was filed for a bare injunction by the respondent against the petitioner to restrain the petitioner from interfering with her peaceful possession and enjoyment of the suit schedule property. As seen from the plaint averments, the respondent claims that she is a cultivating tenant under the petitioner under a lease agreement dated 21.05.1978 executed by her husband. According to the respondent, she has been paying the lease rentals to the petitioner without committing any default. It is also her case that the petitioner through rowdy elements attempted to evict the respondent on 16.05.2012 without following the due procedure established under law.

With these averments the said plaint was filed in O.S.No.349 of 2012 which was renumbered as O.S.No.265 of 2012. During pendency of the suit, I.A.No.854 of 2012 was filed by the respondent in O.S.No.265 of 2012 seeking for a direction to restrain the petitioner from interfering with her peaceful possession and enjoyment of the suit schedule property, pending disposal of the suit.

3. A counter was also filed by the petitioner in I.A.No.854 of 2012 denying that the respondent is a cultivating tenant under the petitioner. The petitioner has also denied the execution of any lease agreement as alleged by the respondent in the plaint as well as in the affidavit filed in support of I.A.No.854 of 2012. The Trial Court by its order dated 13.06.2012 dismissed I.A.No.854 of 2012 filed by the respondent on the ground that the respondent has not established that she is a statutory lessee under the petitioner and there are also discrepancies in the extent of land which stood in the name of Kandiappan from whom the respondent claims to be a lessee. Kandiappan's land measures 5.55 acres whereas the extent described in the petition filed in support of I.A.No.854 of 2012 is only 4.26 acres.

4. The Trial Court did not find any prima facie case and accordingly, dismissed I.A.No.854 of 2012 in O.S.No.265 of 2012 by its order dated 13.06.2012. Aggrieved by the dismissal of I.A.No.854 of 2012 in O.S.No.265 of 2012, the respondent preferred an appeal before the Subordinate Court at pollachi in C.M.A.No.12 of 2012. The Lower Appellate Court by its order dated 21.01.2014 reversed the order dated 13.06.2012 passed by the Trial Court in I.A.No.854 of 2012 in O.S.No.265 of 2012 and granted an injunction as sought for by the respondent in I.A.No.854 of 2014 in O.S.No.265 of 2012. The Lower Appellate Court while reversing the order dated 13.06.2012 has observed that the discrepancies regarding the extent of the property as well as whether the alleged lease agreement relied upon by the respondent is to be a registered document or not, can be looked into only at the time of trial and therefore, has held that the respondent is entitled for injunction as prayed for in I.A.No.854 of 2012 in O.S.No.265 of 2012. Aggrieved by the allowing of C.M.A.No.12 of 2012, the petitioner who is the defendant in the suit has preferred this revision under Article 227 of the Constitution of India.

5. Heard Mr.K.P.Gopalakrishnan, learned counsel for the petitioner and Mr.M.N.Balakrishnan, learned counsel for the respondent.

Discussion:

6. Admittedly, the alleged lease agreement was executed on 21.05.1978 and it is an unregistered lease agreement. Before the Trial Court, the respondent has filed an unregistered lease agreement dated 21.05.1978 executed by the R.Kandiappan in favour of Nanjappan. The Trial Court has also observed that there are discrepancies in the extent of land between the lands allegedly let out to the respondent under the lease agreement dated 21.05.1978 and the lands which are absolutely owned by R.Kandiappan, the petitioner's father.

7. The Trial Court after examining the exhibits filed on the side of the petitioner as well as the respondent had come to the conclusion that the respondent was not entitled for interim injunction pending disposal of the suit. However, the Lower Appellate Court by its order dated 21.01.2012 in C.M.A.No.12 of 2012 has reversed the order holding that only after trial the issue whether the alleged lease agreement is a

genuine document or not, whether the alleged lease agreement is to be registered or not or the discrepancies found in the extend of land, can be looked into only after trial. With these reasons, the Lower Appellate Court has reversed the order of the Trial Court passed in I.A.No.854 of 2012 in O.S.No.265 of 2012.

8. This Court has examined the order of the Trial Court passed in I.A.No.854 of 2012 as well as the order of the Lower Appellate Court in C.M.A.No.12 of 2012. The Trial Court has rightly observed that prima facie case is not in favour of the respondent as she has failed to establish that she is a cultivating tenant to satisfy the court about her possession in the suit schedule property as a cultivating tenant under the petitioner. Excepting for filing of an unregistered lease agreement and one money order receipt dated 18.05.2012 and the complaint given by her to the police which have been marked as Exs. P1 to P6, as rightly pointed out by the Trial Court, the document produced by the respondent will not enable her to get the order of injunction pending disposal of the suit, as no prima facie case has been made out by the respondent.

9. Admittedly, the alleged lease agreement is of the year 1978 and it is an unregistered agreement. However, without considering these facts and without any basis, the Lower Appellate Court has reversed the order of the Trial Court by granting injunction in favour of the respondent as prayed for in I.A.No.865 of 2012 in O.S.No.265 of 2012. This Court is of the considered view that the order passed by the Lower Appellate Court in C.M.A.No.12 of 2012 is an erroneous order and not passed in accordance with law, as prima facie case and balance of convenience is not in favour of the respondent. It is now further submitted by the learned counsel for the petitioner that the petitioner is now in possession of the suit schedule property.

Conclusion:

10. For the foregoing reasons, the impugned order dated 21.01.2014 passed by the learned Subordinate Judge, Pollachi in C.M.A.No.12 of 2012 is hereby set aside and consequently, the order dated 13.06.2012 passed by the learned District Munsif, Pollachi in I.A.No.854 of 2012 in O.S.No.265 of 2012 is hereby confirmed.

11. Considering the long pendency of the suit, the Trial Court is directed to dispose of the suit O.S.No.265 of 2012 within a period of three months from the date of receipt of a copy of this Order.

12. With the above directions, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

26.06.2019

Note: Issue order copy on 01.07.2019

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order

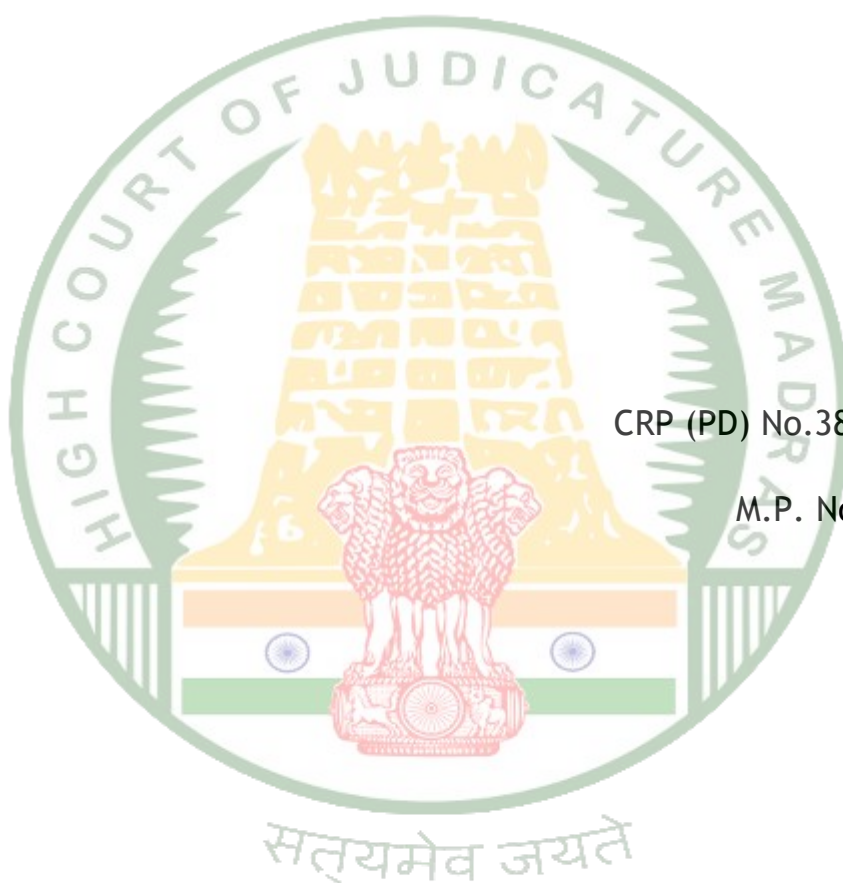
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To

1. The Subordinate Court at Pollachi
2. The District Munsif Court at Pollachi.

ABDUL QUDDHOSE, J.

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